

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

THURSDAY

JANUARY 9, 2003

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 6:30 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN, Chairperson
ANTHONY J. HOOD, Vice Chairperson
PETER G. MAY, Commissioner

ZONING COMMISSION STAFF PRESENT:

ALBERTO BASTIDA, Secretary
SHARON SANCHEZ, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Steven Cochran, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Corey Buffo, Esq.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

I N D E X

Preliminary Matters	5
Presentation of Applicant's Case.....	7
Report of Office of Planning.....	10

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

P-R-O-C-E-E-D-I-N-G-S

6:34 p.m.

CHAIRPERSON MITTEN: On the record. Good evening ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, January 9, 2003. My name is Carol Mitten. Joining me this evening are Vice Chairman Anthony Hood and Commissioner Peter May.

Notice of today's hearing was published in the DC Register on November 29, 2002. This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3022 which are the procedures for contested cases. The subject of this hearing is Zoning Commission Case Number 02-43.

This application is a request by Medstar Health Incorporated, The Washington Hospital Center which is the owner of the property at 110 Irving Street, N.W. for second stage approval of a planned unit development under Chapter 24 of the District of Columbia Zoning Regulations 11 DCMR. Copies of today's hearing announcement are available to you and are located on the table near the door.

The order of procedure will be as follows. Preliminary matters followed by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 presentation of the Applicant's case, report by the
2 Office of Planning, reports of other agencies, report
3 of the affected ANC, in this case it is ANC-5C,
4 parties and persons in support, parties and persons
5 in opposition, and rebuttal by the Applicant.

6 The following time constraints will be
7 maintained in this hearing. The Applicant will have
8 up to one hour. Parties will have 15 minutes.
9 Organizations will have five minutes. Individuals
10 will have three minutes. The Commission intends to
11 maintain these time limits as strictly as possible in
12 order to hear the case in a reasonable period of
13 time. The Commission reserves the right to change
14 the time limits for presentations if necessary and
15 notes that no time shall be seated.

16 Parties may at any time object to any
17 question posed to a witness by another party or to
18 evidence sought to be introduced into the record if
19 it is irrelevant, immaterial or unduly repetitious.
20 The Commissioners as well may request that such
21 testimony or evidence not be received or that such
22 evidence be struck from the record.

23 All persons appearing before the
24 Commission are to fill out two witness cards. These

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cards are located on the table by the door. Upon
2 coming forward to speak to the Commission, please
3 give both cards to the Reporter who is sitting to our
4 right. All individuals or organizations that would
5 like to testify please sign the witness list located
6 on the table at the entrance.

7 The decision of the Commission in this
8 case must be based exclusively on the public record.

9 To avoid any appearance to the contrary, the
10 Commission requests that persons present not engage
11 the members of the Commission in conversation during
12 a recess or at any other time. Staff will be
13 available to discuss procedural questions throughout
14 the hearing.

15 Please turn off all beepers and cell
16 phones at this time so as not to disrupt these
17 proceedings. At this time the Commission will
18 consider any preliminary matters. Mr. Bastida, any
19 preliminary matters.

20 SECRETARY BASTIDA: Yes. The Staff has
21 two preliminary matters. Both are related to a
22 waiver of one is admitting the Office of Planning
23 report into the record because it was filed only last
24 Friday. The other one is we have just received the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 Department of Transportation of District of Columbia
2 report. We would like to request a waiver of the
3 Commission's rules to admit it into the record. The
4 report says DDOT has no objection to the information
5 provided to the Applicant --

6 CHAIRPERSON MITTEN: That's fine. Let me
7 see if there is any objection to waiving it in first
8 before you read it.

9 SECRETARY BASTIDA: I'm sorry. Right.

10 CHAIRPERSON MITTEN: Any objection to
11 waiving the late filing of the Office of Planning
12 report or the Department of Transportation report?

13 VICE CHAIRPERSON HOOD: No objection.

14 CHAIRPERSON MITTEN: All right. Without
15 objection, and I believe you have circulated copies
16 so I don't know that you need to read it aloud.

17 SECRETARY BASTIDA: Well, just for the
18 public.

19 CHAIRPERSON MITTEN: I think we can
20 satisfy ourselves. If the public would like a copy,
21 they could approach.

22 SECRETARY BASTIDA: Okay. Thank you.

23 CHAIRPERSON MITTEN: Thank you. Anything
24 else?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 SECRETARY BASTIDA: That's all the Staff
2 has. Thank you.

3 CHAIRPERSON MITTEN: Thank you. All
4 individuals wishing to testify, would you please rise
5 to take the oath? Ms. Sanchez, go ahead.

6 MS. SANCHEZ: Please raise your right
7 hand.

8 WHEREUPON,

9 MYLES LASH and GERALD OUDENS
10 were called as witnesses and, having been first duly
11 sworn, were examined and testified as follows:

12 CHAIRPERSON MITTEN: Mr. Moore, whenever
13 you are ready.

14 MR. MOORE: Good evening, Chairman Mitten
15 and Members of the Commission. I'm Jerry Moore, the
16 Venable law firm, the Counsel to the Applicant in
17 this proceeding. With me is Myles Lash, the
18 President for the Washington Hospital Center and
19 Gerald Oudens who is an architectural consultant to
20 Medstar.

21 Both have prepared detailed testimony and
22 presentation for the Commission for this evening, but
23 both will choose to submit that testimony for the
24 record unless the Commission directs otherwise. They

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 do so because in the record there are documents and
2 testimony necessary to support the first stage
3 approval including numerous statements of support
4 from the surrounding property owners, ANC-4D, ANC-5C,
5 and community residents, because Order Number 694
6 approving the first stage PUD is in the record, that
7 a second stage submission that is indexed to direct
8 the reader to the sections that demonstrate
9 compliance with Section 2406.12 of the Zoning
10 Regulations, and compliance with Order Number 694 is
11 in the record.

12 Also in the record is a statement
13 discussing how and where the documents submitted in
14 the record support the second stage approval. There
15 is a letter in the record from ANC-4D in support of
16 second stage approval. There's a letter from the
17 Office of Planning supporting the second stage
18 approval. There's a memorandum from the Department
19 of Transportation that raises no objection to second
20 stage approval. Also there is no opposition to the
21 second stage approval from any party or person.

22 The Applicant states for the record that
23 it has no objections to the conditions set forth in
24 the first stage approval order. If there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 questions, the Applicant is prepared to respond. If
2 not, the Applicant believes that the record is
3 complete and unopposed and respectfully urges the
4 Commission to approve the application for second
5 stage approval at its very first convenience,
6 hopefully this evening. Thank you.

7 CHAIRPERSON MITTEN: All right. What was
8 it that you had that you were going to submit that
9 the individuals Mr. --

10 MR. MOORE: Mr. Lash has written
11 testimony that he was going to give. We are content
12 to submit it to the record. Mr. Oudens, the
13 architectural consultant and expert, has a Powerpoint
14 presentation that he can submit the slides to the
15 record unless the Commission directs otherwise.

16 CHAIRPERSON MITTEN: All right. Well, I
17 guess logistically if we accept those things in I
18 presume you would want us to read them and digest
19 them before we would render a decision. Or do you
20 consider them somewhat duplicative?

21 MR. MOORE: I consider them supplementary
22 to the documents that are already in the record.
23 This case is very old.

24 CHAIRPERSON MITTEN: Right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MOORE: I don't think you will see
2 anything that is terribly new.

3 CHAIRPERSON MITTEN: Okay. Are we
4 satisfied then? Does anyone want a presentation by
5 the Applicant or are we satisfied standing on the
6 record?

7 VICE CHAIRPERSON HOOD: I think standing
8 on the record, Madam Chair, would be fine with me.

9 CHAIRPERSON MITTEN: All right. Then
10 I'll just ask are there any questions that you would
11 like to put to the Applicant?

12 (No response.)

13 CHAIRPERSON MITTEN: This is going
14 quickly. Okay. Then we'll see how much time Mr.
15 Cochran needs to make his presentation because we are
16 ready for the report by the Office of Planning.

17 MR. COCHRAN: For the record, my name is
18 Steven Cochran with the Office of Planning, Madam
19 Chair. The Office of Planning is pleased to stand on
20 the record which has been established since the time
21 the Chair was in grade school.

22 CHAIRPERSON MITTEN: Well, that was a
23 long time ago. I don't think we've been dealing with
24 this quite that long. That's fine. Thank you. Any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 questions for Mr. Cochran on the Office of Planning
2 report?

3 (No response.)

4 CHAIRPERSON MITTEN: No questions. Did
5 you have any questions?

6 MR. MOORE: No.

7 CHAIRPERSON MITTEN: As Mr. Bastida
8 noted, we have a submission from the Department of
9 Transportation. We don't have a recent submission
10 from ANC-5C on the second stage PUD. Did you have
11 anything on the second stage, Mr. Moore.

12 MR. MOORE: I can state for the record
13 that we did attend the ANC-5C meeting in early
14 November of last year. At that time, the commission
15 did in fact vote to send a letter stating their
16 support for this second stage approval of this
17 application subject to the hospital sending over two
18 documents to them. Those two documents were sent. I
19 cannot tell you why you do not have a letter in the
20 record from them.

21 CHAIRPERSON MITTEN: Okay. Well, it's
22 good to know that they are in support, but without
23 the letter they won't be accorded great weight. Then
24 are there any persons who would like to testify in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 support here tonight?

2 (No response.)

3 CHAIRPERSON MITTEN: Any persons who
4 would like to testify in opposition?

5 (No response.)

6 CHAIRPERSON MITTEN: All right. Any last
7 thoughts, Mr. Moore.

8 MR. MOORE: We're hopeful that this case
9 could be ended this evening. If it were to end this
10 evening with a preliminary decision by the
11 Commission, we were in a position to send the
12 proposed order to NCPC. The Commission would be in
13 the position to finally rule on this at its February
14 meeting I believe. Mr. Bastida can correct me if I
15 am wrong. We do have covenants that are already
16 drawn up. I think the record is quite strong of the
17 need for the Hospital Center to move forward at the
18 earliest possible date.

19 CHAIRPERSON MITTEN: Okay. Thank you.
20 Mr. Bastida, what is the timing like to get this on
21 for our February agenda if we proceed now.

22 SECRETARY BASTIDA: It's possible.

23 CHAIRPERSON MITTEN: Okay.

24 SECRETARY BASTIDA: As long as I receive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that order tomorrow almost. Well, I had to make the
2 referral to NCPC by last Monday. So I can ask for a
3 grace period, but I need it maybe not tomorrow but
4 Monday morning.

5 MR. MOORE: Monday morning.

6 SECRETARY BASTIDA: Okay. That's 12
7 noon.

8 (Laughter.)

9 MR. MOORE: That's Eastern Standard Time.

10 SECRETARY BASTIDA: Okay. Thank you.

11 VICE CHAIRPERSON HOOD: Madam Chair, if I
12 could. I would like to make a motion that we approve
13 the second stage PUD of Zoning Commission case number
14 02-43.

15 CHAIRPERSON MITTEN: Second? Is there
16 anything you would like to say in support of your
17 motion, Mr. Hood.

18 VICE CHAIRPERSON HOOD: I think that the
19 record has been clear on my position. I don't want
20 to rehash any old conversations. I think the
21 transcript and the record is complete. I think that
22 they have done the wishes of this Commission and what
23 we have asked for. I don't want to go there. But
24 anyway I will just stand on that. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 CHAIRPERSON MITTEN: Thank you. I agree.
2 We've asked you to conform to the PUD for certain
3 reasons. We're to the point where we want it to be
4 when we started. Now that we are here, we need not
5 belabor the process any further. Anything?

6 VICE CHAIRPERSON HOOD: Let me just say
7 this, Madam Chair. I don't think I was actually the
8 person who should have spoken on that because of the
9 issues that happened earlier. I think it came better
10 coming from you.

11 CHAIRPERSON MITTEN: Thank you.

12 VICE CHAIRPERSON HOOD: Thank you.

13 CHAIRPERSON MITTEN: Any further
14 discussion?

15 (No response.)

16 CHAIRPERSON MITTEN: All those in favor
17 please say aye.

18 (Chorus of ayes.)

19 CHAIRPERSON MITTEN: Those opposed please
20 say no.

21 (No response.)

22 CHAIRPERSON MITTEN: Ms. Sanchez, would
23 you record the vote?

24 MS. SANCHEZ: Yes. Staff would record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the vote three to zero to two. Commissioner Hood
2 moving, Commissioner Mitten seconding, Commissioner
3 May in favor of approving Case Number 02-43 for
4 proposed action. Commissioners Parsons and Hannaham
5 not present, not voting.

6 CHAIRPERSON MITTEN: Thank you. And Mr.
7 Moore is going to run off now and work on that order.

8 MR. MOORE: Absolutely. Thank you so
9 much to the Commission. It's been a long process,
10 but thank you.

11 CHAIRPERSON MITTEN: I now declare this
12 public hearing adjourned. Off the record.

13 (Whereupon, the above-entitled matter
14 concluded at 6:47 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433